

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JACKSON LEWIS LLP  
*ATTORNEYS FOR DEFENDANTS*  
666 Third Avenue  
New York, New York 10017  
(212) 545-4000

ATTORNEYS OF RECORD:  
FELICE B. EKELMAN, ESQ.  
NOEL P. TRIPP, ESQ.

-----X  
KARLY ESPINAL, GREGORIO VASQUEZ, JESUCRISTO  
SANTOS LUNA, YAN CARLOS MENA, NELSON DIAZ,  
ENGLES RODRIGUEZ, EDDY NUNEZ, MIGUEL  
AGRAMONTE-BAEZ, CORPUS PEREZ, SANTOS ROJAS-  
FRIAS, and JUAN N. NUNEZ, on behalf of themselves and  
others similarly situated,

Plaintiffs,

-against-

SHINOBI NY LLC d/b/a/ NINJA NEW YORK, HARUO  
YAZAKI, and JOHN DOES 1-10,

Defendants.  
-----X

Civ. No.: 12-CV-5313

Swain, J.

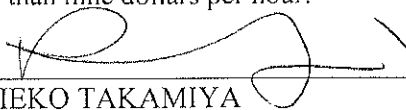
TO: C.K. LEE, ESQ.  
LEE LITIGATION GROUP, PLLC  
*ATTORNEYS FOR PLAINTIFFS EDDY NUNEZ*  
*And SANTOS ROJAS-FRIAS*  
30 East 39th Street, Second Floor  
New York, NY 10016


**AFFIDAVIT OF RIEKO TAKAMIYA**

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

Rieko Takamiya, deposes and says:

1. I am Office Manager for Defendant SHINOBI NY LLC, which owns and operates Ninja Restaurant located at 25 Hudson Street in Manhattan ("Ninja"). In that role, I am familiar with how Ninja pays its workers. This affidavit is based on my personal knowledge and my review of Ninja's business records. I am submitting this affidavit in opposition to Plaintiffs Eddy Nunez and Santos Rojas-Frias' ("Plaintiffs") request to send a court approved Notice to individuals employed only after August 20, 2012.
2. Ninja has paid overtime to all employees Plaintiffs seek to represent in the collective action from the period August 20, 2012 to the present. Ninja denies Plaintiffs' allegations that they or others were denied proper overtime for the period prior to August 20, 2012 for a number of reasons, including the fact that Ninja is open only for dinner, and hours worked are correspondingly limited for most employees. For example, no server or other "front of the house" worker is scheduled to work more than 32 hours per week (4 shifts of 8 hours each). Beginning August 20, 2012, Ninja modified its pay practices to ensure that all eligible employees were paid overtime when they work more than 40 hours in a week.
3. Attached hereto are paystubs for various individuals who were hired by Ninja after August 20, and to whom Plaintiffs wish to send Notice. As is evident from the records, each employee was paid overtime when they worked more than 40 hours in a week.
4. Plaintiff Nunez worked for Ninja from on or about May 8, 2009 to on or about July 1, 2012. His rate of pay was never less than nine dollars per hour.
5. Plaintiff Rojas-Frias worked for Ninja from on or about September 12, 2008 to on or about January 23, 2011. His rate of pay was never less than nine dollars per hour.

  
RIEKO TAKAMIYA



7/8/2013

Sworn to and subscribed before me  
this 8<sup>th</sup> day of July, 2013.

  
Notary Public

4828-1987-9956, v. 2

ANA D CORSINO  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01CO6256757  
Qualified in New York County  
My Commission Expires 03-05-2016

05/03/2013

\*\*686.93

\*\*\*\*\*Six hundred and eighty-six and 93/100

**REDACTED**

Pay Period: 04/14/2013 - 04/27/2013

<u>PAY</u>	<u>Hours</u>	<u>Rate</u>	<u>Current</u>	<u>YTD</u>
Regular Pay	78.50	10.00	785.00	1,453.25
Overtime Pay	0.75	15.00	11.25	11.25

<u>TAXES</u>	<u>Current</u>	<u>YTD</u>
Federal Income Tax	17.70	22.60
Social Security	49.37	90.80
Medicare	11.55	21.24
NY Income Tax	17.55	29.43
NY City Income Tax	11.95	19.93

SHINOBI NY LLC  
100 CHURCH STREET STE  
816  
NEW YORK  
NY, 10007  
646-717-0266

<u>DEDUCTIONS</u>	<u>Current</u>	<u>YTD</u>
NY - Disability	1.20	2.40

<u>OTHER PAY</u>	<u>Current</u>	<u>YTD</u>
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Pay Period  
04/14/2013 - 04/27/2013

Pay Date  
05/03/2013

MEMO:

<u>BENEFITS</u>	<u>Used</u>	<u>Available</u>
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<u>SUMMARY</u>	<u>Current</u>	<u>YTD</u>
Total Pay	\$796.25	\$1,464.50
Taxes	\$108.12	\$184.00
Deductions	\$1.20	\$2.40

**NET PAY:** **\$686.93**

<u>PAY</u>	<u>Hours</u>	<u>Rate</u>	<u>Current</u>	<u>YTD</u>
Regular Pay	78.50	10.00	785.00	1,453.25
Overtime Pay	0.75	15.00	11.25	11.25

<u>TAXES</u>	<u>Current</u>	<u>YTD</u>
Federal Income Tax	17.70	22.60
Social Security	49.37	90.80
Medicare	11.55	21.24
NY Income Tax	17.55	29.43
NY City Income Tax	11.95	19.93

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<u>DEDUCTIONS</u>	<u>Current</u>	<u>YTD</u>
NY - Disability	1.20	2.40

<u>OTHER PAY</u>	<u>Current</u>	<u>YTD</u>
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Pay Period  
04/14/2013 - 04/27/2013

Pay Date  
05/03/2013

MEMO:

<u>BENEFITS</u>	<u>Used</u>	<u>Available</u>
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<u>SUMMARY</u>	<u>Current</u>	<u>YTD</u>
Total Pay	\$796.25	\$1,464.50
Taxes	\$108.12	\$184.00
Deductions	\$1.20	\$2.40

**NET PAY:** **\$686.93**

10/19/2012

\*\*522.80

\*\*\*\*\*Five hundred and twenty-two and 80/100

**REDACTED**

Pay Period: 09/30/2012 - 10/13/2012

PAY	Hours	Rate	Current	YTD
Regular Pay	63.75	9.00	573.75	1,473.75
Overtime Pay	1.00	13.50	13.50	13.50

TAXES	Current	YTD
Federal Income Tax	12.96	30.43
Social Security	24.66	62.46
Medicare	8.52	21.57
NY Income Tax	10.45	23.15
NY City Income Tax	6.66	14.94

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DEDUCTIONS	Current	YTD
NY - Disability	1.20	3.65

OTHER PAY	Current	YTD
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Pay Period  
09/30/2012 - 10/13/2012

Pay Date  
10/19/2012

MEMO:

BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$587.25	\$1,487.25
Taxes	\$63.25	\$152.55
Deductions	\$1.20	\$3.65

NET PAY: \$522.80

PAY	Hours	Rate	Current	YTD
Regular Pay	63.75	9.00	573.75	1,473.75
Overtime Pay	1.00	13.50	13.50	13.50

TAXES	Current	YTD
Federal Income Tax	12.96	30.43
Social Security	24.66	62.46
Medicare	8.52	21.57
NY Income Tax	10.45	23.15
NY City Income Tax	6.66	14.94

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DEDUCTIONS	Current	YTD
NY - Disability	1.20	3.65

OTHER PAY	Current	YTD
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Pay Period  
09/30/2012 - 10/13/2012

Pay Date  
10/19/2012

MEMO:

BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$587.25	\$1,487.25
Taxes	\$63.25	\$152.55
Deductions	\$1.20	\$3.65

NET PAY: \$522.80

01/11/2013

\*\*592.88

\*\*\*\*\*Five hundred and ninety-two and 88/100

**REDACTED**

Pay Period: 12/23/2012 - 01/05/2013

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Pay Period  
12/23/2012 - 01/05/2013

Pay Date  
01/11/2013

MEMO:

PAY	Hours	Rate	Current	YTD
Regular Pay	74.25	9.00	668.25	668.25
Overtime Pay	1.00	13.50	13.50	13.50

TAXES	Current	YTD
Federal Income Tax	16.06	16.06
Social Security	42.27	42.27
Medicare	9.89	9.89
NY Income Tax	11.65	11.65
NY City Income Tax	7.80	7.80

DEDUCTIONS	Current	YTD
NY - Disability	1.20	1.20

OTHER PAY	Current	YTD
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BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$681.75	\$681.75
Taxes	\$87.67	\$87.67
Deductions	\$1.20	\$1.20

NET PAY: \$592.88

PAY	Hours	Rate	Current	YTD
Regular Pay	74.25	9.00	668.25	668.25
Overtime Pay	1.00	13.50	13.50	13.50

TAXES	Current	YTD
Federal Income Tax	16.06	16.06
Social Security	42.27	42.27
Medicare	9.89	9.89
NY Income Tax	11.65	11.65
NY City Income Tax	7.80	7.80

DEDUCTIONS	Current	YTD
NY - Disability	1.20	1.20

OTHER PAY	Current	YTD
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BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$681.75	\$681.75
Taxes	\$87.67	\$87.67
Deductions	\$1.20	\$1.20

NET PAY: \$592.88

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Pay Period  
12/23/2012 - 01/05/2013

Pay Date  
01/11/2013

MEMO:

05/31/2013

\*\*768.94

\*\*\*\*\*Seven hundred and sixty-eight and 94/100

**REDACTED**

Pay Period: 05/12/2013 - 05/25/2013

SHINOBI NY LLC  
100 CHURCH STREET STE  
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Pay Period  
05/12/2013 - 05/25/2013

Pay Date  
05/31/2013

MEMO:

PAY	Hours	Rate	Current	YTD
Regular Pay	72.00	10.00	720.00	802.50
Overtime Pay	12.50	15.00	187.50	187.50

TAXES	Current	YTD
Federal Income Tax	28.83	28.83
Social Security	56.26	61.38
Medicare	13.16	14.36
NY Income Tax	23.47	23.47
NY City Income Tax	15.64	15.64

DEDUCTIONS	Current	YTD
NY - Disability	1.20	1.61

OTHER PAY	Current	YTD
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BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$907.50	\$990.00
Taxes	\$137.36	\$143.68
Deductions	\$1.20	\$1.61

**NET PAY: \$768.94**

PAY	Hours	Rate	Current	YTD
Regular Pay	72.00	10.00	720.00	802.50
Overtime Pay	12.50	15.00	187.50	187.50

TAXES	Current	YTD
Federal Income Tax	28.83	28.83
Social Security	56.26	61.38
Medicare	13.16	14.36
NY Income Tax	23.47	23.47
NY City Income Tax	15.64	15.64

DEDUCTIONS	Current	YTD
NY - Disability	1.20	1.61

OTHER PAY	Current	YTD
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BENEFITS	Used	Available
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SUMMARY	Current	YTD
Total Pay	\$907.50	\$990.00
Taxes	\$137.36	\$143.68
Deductions	\$1.20	\$1.61

**NET PAY: \$768.94**

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Pay Period  
05/12/2013 - 05/25/2013

Pay Date  
05/31/2013

MEMO:

04/05/2013

\*\*637.68

\*\*\*\*\*Six hundred and thirty-seven and 68/100

**REDACTED**

Pay Period: 03/17/2013 - 03/30/2013

PAY	Hours	Rate	Current	YTD
Regular Pay	72.50	10.00	725.00	1,622.50
Overtime Pay	2.75	15.00	41.25	41.25

TAXES	Current	YTD
Federal Income Tax	40.08	59.12
Social Security	47.50	103.15
Medicare	11.11	24.12
NY Income Tax	17.07	25.99
NY City Income Tax	11.61	18.43

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DEDUCTIONS	Current	YTD
NY - Disability	1.20	3.60

OTHER PAY	Current	YTD
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Pay Period  
03/17/2013 - 03/30/2013

BENEFITS	Used	Available
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Pay Date  
04/05/2013

MEMO:

SUMMARY	Current	YTD
Total Pay	\$766.25	\$1,663.75
Taxes	\$127.37	\$230.81
Deductions	\$1.20	\$3.60

NET PAY: \$637.68

PAY	Hours	Rate	Current	YTD
Regular Pay	72.50	10.00	725.00	1,622.50
Overtime Pay	2.75	15.00	41.25	41.25

TAXES	Current	YTD
Federal Income Tax	40.08	59.12
Social Security	47.50	103.15
Medicare	11.11	24.12
NY Income Tax	17.07	25.99
NY City Income Tax	11.61	18.43

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DEDUCTIONS	Current	YTD
NY - Disability	1.20	3.60

OTHER PAY	Current	YTD
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Pay Period  
03/17/2013 - 03/30/2013

BENEFITS	Used	Available
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Pay Date  
04/05/2013

MEMO:

SUMMARY	Current	YTD
Total Pay	\$766.25	\$1,663.75
Taxes	\$127.37	\$230.81
Deductions	\$1.20	\$3.60

NET PAY: \$637.68